Court No.2

In the High Court of Uttaranchal at Nainital. .

Appeal Against Order No. 1527 of 2001.

(1) Smt. Sushila Balbir Singh
W/o late Sri Balbir Singh,
(2) Km. Priyanka D/o late Sri Balbir Singh,
Both residents of Mission Rest House
Compunt, Lower Bazar, Kotdwara,
District-Pauri Garhwal.

.....Claimants/ Appellants

Versus

(1) Sri Chandra Singh Gosain
S/o Sri Soban Singh Gosain,
Owner of Vehicle No. UTS/ 1561,
R/o Near Devi Mandir,
Kotdwara, District Garhwal.
(2) United India Insurance Company,
Branch Kotdwara, Garhwal through
Regional Manager, Mitra Vatika,
Ranipur Mod, Hardwar.

.....Opp.parties/Respondents.

Sri Rajendra Dobhal, learned counsel for the Claimants/appellants.
Sri K.K. Shah, learned counsel for the respondent No.2.

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Dated: 21st Aug., 2004.

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This is an appeal filed by the claimants against the judgment and order dated 01.10.2001passed by Commissioner for Workmen's Compensation, Pauri Garhwal ***(hereinafter referred to as the Commissioner)*** in Workmen's Compensation Case No. 1 of 1999, whereby the application filed by the claimants under Sec. 22 of the Workmen's Compensation Act, 1923 has been dismissed by him.

Brief facts giving rise to this appeal are that the claimants are the wife and daughters of the deceased

Balbir Singh who was driver of Bus No. UTS 1561 owned by Opp.party No. 1-Chandra Singh Gusain and insured with Opp.party No.2-United India Insurance Company. On 16.2.1999 when Balbir Singh was driving the bus and going from Kotdwara to Tangroli within the circle of Village-Vaniagaon he stopped the bus on account of some technical effect felt by him in the wheels of the bus. After getting down from the bus, the drive went to examine the tyre and when he was examining the tyre, he suffered a massive heart attack and died on the spot.

The learned counsel for the appellants submitted that Balbir Singh died during the course of employment of the employer. Driving is straneous job that always creates strain and coronary insufficiency is generally the consequence of strain, extra work and fatigue. The death of the deceased, immediately after getting down from the bus, itself indicates that there was some coronary insufficiency while he was driving the bus, which caused the massive heart attack while he was checking the tyre.

The learned counsel for the Insurance Company submitted that the finding of the Commissioner is correct, as the death of the deceased was natural death. Such a massive heart attack cannot be said that there was coronary insufficiency. He further submitted that no F.I.R. of the incident was lodged. No post mortem was conducted who could prove the heart attack. He further submitted that the death due to heart attack was duly proved by the report of Naib Tehsildar and Patwari of the area who had conducted the inquiry of the incident.

We have perused the evidence on record. Though there is no post mortem report, yet the time of stopping the

bus and stepping down therefrom and the death is very short and death could only be caused in such a span of time of a massive heart attack. Therefore, the report of Patwari and Naib Tehsildar reporting that the cause of death was heart attack cannot be disbelieved. The Commissioner has also not disbelieved this statement and had held that the death occurred due to heart attack. The Commissioner refused to pay the compensation only on the ground that it was not by an accident or by injury caused to deceased. The death occurred while he was on the road and bus was stationary. The learned Commissioner fell into error in not holding that the workman died during the course of employment. It was a death on account of heart attack which occurs due to coronary insufficiency which is as a result of strenuous and extra heavy work. Considering the nature of the work, the cause of death is related to the duty performed by the deceased. Therefore, it was an accident during the course of employment. Thus, we allow the appeal and provide that the claimants shall be entitled to compensation.

Now coming to the quantum of compensation. learned counsel for the United Insurance Company submitted that in view of the statement of the owner of the offending vehicle that the deceased was engaged only for one day, therefore he was not a regular employee and he was not being paid monthly wages. The compensation could not be calculated for such a situation. The deceased was aged about 48 years and he would have earned Rs. 2000/- per month. Therefore, this is the amount of income which could be made the basis for calculation of the amount of compensation under Sec.4 of Schedule IV of the Workmen's Compensation Act, 1923. On calculation it

comes to Rs. 159.80X2000 divided by 2=Rs. 1,59,800.00. Since the Insurance Company has not disputed the insurance of the vehicle in question, hence the Insurance Company is liable to pay the entire amount of compensation.

The appeal is allowed accordingly. The claim petition is decreed for Rs. 1,59,800/- (Rupees one lac fifty nine thousand eight hundred) only as compensation alongwith interest at the rate of 9% (nine per cent) per annum from the date of filing of the claim petition till the date of payment against the Opp.party No.2-United India Insurance Company Ltd.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P. Singh